

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Child and Family Services Agency
Office of the General Counsel



MLA 06-05
June 21, 2006

Memorandum of Legal Advice

Issue

The Child and Family Services Agency (CFSA) Office of the General Counsel was asked the following questions by the CFSA Licensing and Monitoring Administration (LMA):

An unlicensed youth residential facility (facility) has asked that it be given a provisional license prior to its submission of an application for licensure. The facility in question appears to be a youth group home that would be licensed under 29 DCMR Ch. 62. May CFSA decide not to issue a provisional license in this circumstance?

Conclusion

For the reasons below, we have concluded that CFSA may lawfully decide not to issue a provisional license to an unlicensed youth residential facility that has not submitted an application for licensure.

Analysis

Licensing authority is derived from the Youth Residential Facilities Licensure Act of 1986

The Youth Residential Facilities Licensure Act of 1986, D.C. Law 6-139 (effective Aug. 13, 1986; D.C. Official Code § 7-2101 *et seq.*) (Act) establishes a statutory scheme for the licensing of youth residential facilities. The licensing scheme includes the requirement that a facility must be licensed to operate in the District. D.C. Official Code § 7-2102

The Act applies to facilities licensed by CFSA under 29 DCMR Chs. 62 and 63. Section 7-2101(9)(A) of the Act defines a "youth residential facility" as:

a residential placement providing adult supervision and care for 1 or more children who are not related by blood, marriage, guardianship, or adoption (including both final and nonfinal adoptive placements) to any of the facility's adult caregivers and who were found to be in need of a specialized living arrangement as the result of:

- (i) A detention or shelter care hearing held pursuant to § 16-2312;

- (ii) A dispositional hearing held pursuant to § 16-2317;
- (iii) Family crisis, homelessness, runaway status, or other circumstances creating a need for out-of-home supervision and care; or
- (iv) A mental or physical handicap that requires, in accordance with 20 U.S.C.S. § 1401 et seq., more services than can be provided by nonresidential programs.

Pursuant to Section 7-2101(9)(B) of the Act, the term:

shall include, but not necessarily be limited to, foster homes, youth shelters, runaway shelters, emergency care facilities, youth group homes, supervised apartments, and residential treatment centers; it shall not include informal substitute care provided by friends or neighbors or those facilities licensed under Chapter 5 of Title 44.

As relevant to CFSA, the facilities licensed under 29 DCMR Ch. 62 are runaway shelters, emergency care facilities and youth group homes. See, esp. 29 DCMR § 6202.1. Based on the knowledge of LMA staff, the facility in question appears to be a youth group home that would be licensed under 29 DCMR Ch. 62, which is a facility that falls under the Act.

Act permits provisional licensure under limited circumstances The Act establishes two circumstances under which a provisional license may be issued:

- “As an alternative to denial, nonrenewal, suspension, or revocation of a license, whenever a facility has numerous deficiencies or a serious single deficiency” pursuant to the licensing rules. The provisional license may only be issued “if the facility is taking appropriate corrective actions in accordance with a mutually agreed-upon timetable.” D.C. Official Code § 7-2107(a)(1)
- In accordance with the law concerning on-site inspections prior to an initial license, as an alternative to issuing a full year license and “pending satisfactory completion of additional, follow-up inspections.” D.C. Official Code §§ 7-2105(a)(1) and 7-2107(b)

Provisional license as an alternative to denial, nonrenewal, suspension, or revocation of a license Under D.C. Official Code § 7-2107(a)(1), a provisional license is an alternative to denying, suspending, revoking or not renewing a license. Even in these circumstances, a provisional license may only be issued if the facility is taking appropriate corrective action.

For an unlicensed facility, a provisional license could be issued only as an alternative to denial of a license.¹ The decision to deny a license is one that is made following a number of steps. For an original annual license and as set out in 29 DCMR § 6209.4, there is: a review

¹ “Nonrenewal” applies to the decision not to renew a license that has been issued. Suspension and revocation are actions taken against an existing license. 29 DCMR § 6213.

of the application; a review of the documents filed with the application under 29 DCMR § 6209.2; a review of plans for complying with certain rules required to be filed with the application under 29 DCMR § 6209.3; and the sanitary and environmental inspection, the fire inspection, and the on-site inspection in accordance with 29 DCMR §§ 6207.2 and 6207.3,

In this situation, the facility has not submitted the requisite application for an original annual license. Thus, CFSA cannot take the steps needed to make a decision whether to issue or deny license. CFSA therefore cannot issue a provisional license under D.C. Official Code § 7-2107(a)(1).

Provisional license as an alternative to issuing a full license pending satisfactory follow-up investigations Under D.C. Official Code §§ 7-2105(a)(1) and 7-2107(b), a provisional license is an alternative to full licensing when additional inspections are required. As addressed above, the inspection process follows submission of the application. Again, the facility's failure to submit the application packet precludes CFSA from making an on-site inspection and, thus, from being able to consider whether to issue a provisional license based on the initial inspection.²

Provisional licensure is not mandatory D.C. Official Code §§ 7-2107 and 7-2105 are permissive, not mandatory. A provisional license *may* be issued pursuant to either of these provision, but it is not required to be issued. Deciding not to issue a provisional license to a facility that has failed to submit an application packet is an appropriate exercise of administrative discretion.

Conclusion For the reasons above, we conclude that CFSA may lawfully decide not to issue a provisional license to an unlicensed youth residential facility that has not submitted an application packet.

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² It is also questionable this language applies to the facility because it is neither a new facility nor a licensee. The entity has been in operation since at least 2002. It is not "new". It is also not a "licensee" as, to the best of CFSA's knowledge, it has not been issued a license by any District agency.